

# MEETING OF THE CITY COUNCIL

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
CONTRACT SERVICES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT - NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC UTILITIES
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER:

25

DATE:

MAY 4 2006

MOTION/SECOND:

2006-05-04-0556  
GuaJARDO/Haass

ORDINANCE NUMBER:

RESOLUTION NUMBER:

ZONING CASE NUMBER:

TRAVEL AUTHORIZATION:

NAME	ROLL	AYE	NAY
ROGER O. FLORES District 1			
SHEILA D. MCNEIL District 2			
ROLAND GUTIERREZ District 3			
RICHARD PEREZ District 4			
PATTI RADLE District 5			
DELICIA HERRERA District 6			
ELENA GUAJARDO District 7			
ART A. HALL District 8			
KEVIN A. WOLFF District 9			
CHRISTOPER "CHIP" HAASS District 10			
PHIL HARDBERGER Mayor			

CONSENT AGENDA

AN ORDINANCE 2006-05-04-0556

**AMENDING CHAPTER 35, UNIFIED DEVELOPMENT CODE, OF  
THE CITY CODE OF SAN ANTONIO, TEXAS, BY AMENDING  
VARIOUS SECTIONS RELATING TO CONSTRUCTION OF  
SIDEWALKS.**

\* \* \* \* \*

**WHEREAS**, the San Antonio City Council adopted the revised Unified Development Code (UDC) on May 3, 2001 and reenacted the Unified Development Code, 2005 Edition on September 22, 2005; and

**WHEREAS**, a request for amendment of Chapter 35 was initiated by City Council District 5 with the goal of removing the unfair financial burden of requiring construction of sidewalks where little to no benefit to the public would be realized in residential areas that have previously been developed without sidewalks and curb and gutter streets, and;

**WHEREAS**, the proposed amendment has been submitted to the Governance Council Committee, Urban Affairs Council Committee and the Zoning and Planning Commissions for review; and

**WHEREAS**, the San Antonio City Council, in support of the goal of improving curb and sidewalk accessibility for its disabled citizens, finds that providing information regarding income tax relief for those commercial property owners installing Americans with Disabilities Act compliant sidewalks furthers public welfare and safety, **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 35 of the City Code of San Antonio, Texas is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (deleted) to the existing text as set forth in this Ordinance.

**SECTION 2.** Chapter 35 of the City Code of San Antonio, Texas is hereby amended as follows:

**35-506 Transportation and street Design**

**(q) Sidewalk Standards**

**Commentary:** The following information, regarding possible tax incentives for installation of Americans with Disabilities Act compliant improvements, is being provided for reference purposes only. For detailed information contact the Internal Revenue Service (IRS) or a professional tax advisor..

**ADA Barrier Removal Tax Credit**

**Congress, in 1990, legislated the annual tax credit of \$5,000 to enable small businesses to comply with requirements under the Americans with Disabilities**

Act (ADA) of 1990, 42 U.S.C. Subsection 1281 et seq.. (Section 44 of Internal Revenue Code)

Any qualified expenditures made after November 5, 1990, the date of enactment, are eligible for the Section 44 credit. Additionally, Section 190 of the Internal Revenue Code allows \$15,000 to be deducted annually for qualified architectural and transportation barrier removal expense. This provision became effective with tax year 1991.

#### **Provisions of Section 44**

A small business may elect to take a general business credit of up to \$5,000 annually for eligible access expenditures to comply with the requirements of ADA. "Small business" is defined as a business with annual gross receipts of \$1 million or less or 30 or fewer full-time employees.

Expenditures must be geared toward ADA compliance and must be reasonable and necessary expenses. Included are amounts related to removing barriers, providing interpreters, readers or similar services and modifying or acquiring equipment and materials.

The amount that may be taken as a credit is 50% of the amount exceeding \$250, but less than \$10,250 per tax year. For instance, if \$7,500 is spent to provide a sidewalk, the credit would be \$3,625 (\$7,500 minus \$250 divided by 2.) This credit may be taken each year ADA improvements are made.

This tax credit, called the **Disabled Access Tax Credit**, should be claimed on IRS Form 8826.

#### **Section 190**

Section 190 applies to all businesses and has a narrower base for deductions. Qualified expenditures for the removal of architectural and transportation barriers include expenses specifically attributable to the removal of existing barriers (such as steps or narrow doors) or inaccessible parking spaces, bathrooms and vehicles. They may be fully deducted, up to a maximum of \$15,000 for each taxable year. Expenses from the construction or comprehensive renovation of a facility or vehicle or the normal replacement of depreciable property are not included.

Further information on possible deductions, forms and publications may be obtained by contacting the IRS directly or via the official IRS website at [www.irs.gov](http://www.irs.gov).

Prepared by: Disability Access Office /Public Works Department 4-04

#### **(1) Applicability.**

- A. Sidewalks shall be required on both sides of all internal streets and the subdivision side of all adjacent or perimeter streets

except as specified in Subsection (2), below. All non-residential, residential corner and reverse residential street lots shall have sidewalks provided on both street frontages. Sidewalks shall be required as part of the street improvements only on one (1) side of subdivision entry streets unless residential lots are platted or planned to be platted on both sides of the street. In addition, if sidewalks are in place at the time of platting or permitting, the requirement to reconstruct said walks shall be imposed if walks do not meet minimum ADA standards.

**(2) Sidewalk exceptions**

Sidewalks shall not be required in the following situations:

- A. When a pedestrian circulation plan accompanied by the plan review fee specified in Appendix "C" has been submitted to and approved by the planning commission prior to or at the time of plat approval. The pedestrian circulation plan shall show the location and arrangement of all-weather walkways and the phasing or time schedule for the construction of the walkways. In considering the plan, the planning commission shall require and may impose conditions to ensure that access to and along the walkway areas is safe, convenient, and provides pedestrians with adequate paths of movement. If the proposed walkways are not located within a public right-of-way, then pedestrian easements shall be included on the plat.
- B. When the Director of Development Services<sub>1</sub> in consultation with the Director of Public Works<sub>1</sub> determines that the sidewalks will interfere with or disrupt drainage.
- C. When the Director of Development Services<sub>1</sub> in consultation with the Director of Public Works<sub>1</sub> determines that public construction which would require sidewalk replacement will take place on the Street within three (3) years.
- D. On local type A Streets in single- or two-family residential subdivisions with a density less than 2.5 residential units per acre.
- E. On Streets in residential subdivisions where no adjacent lots are platted<sub>1</sub> if approved by the Director of Development Services, such as Sstreets adjacent to walls or drainage ways.
- F. Where the Director of Development Services determines that preservation of trees warrants the elimination, reduction in width, or modification to the sidewalk and curb requirements in accordance with the Tree Preservation Standards.

- G. In developed blocks, where the area is residentially zoned for single family detached dwellings, and where both of the following conditions exist:
- a. seventy percent (70%) or more of the improved lots fronting the street in any one block face do not have sidewalks; and
  - b. a connecting sidewalk does not exist on both sides of the subject property for which construction permits are being sought.

#### **APPENDIX A: DEFINITIONS & RULES OF INTERPRETATION**

*Delete present definition (struck through) for "Block face" and add new (underlined) definition.*

##### **Block face**

~~Properties that align one one side of the street along one block.~~

The properties abutting one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intercepting street and/or railroad right-of-way, unsubdivided land, water course or city boundary.

**SECTION 3.** All other provisions of Chapter 35 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

**SECTION 4.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 5.** The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein, to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 6.** There is no financial impact as a result of the passage of this ordinance.

**SECTION 7.** This ordinance shall become effective May 14, 2006.


**PASSED AND APPROVED** this the 4<sup>th</sup> day of May, 2006.

ATTEST:

  
City Clerk

  
MAYOR  
**PHIL HARDBERGER**

APPROVED AS TO FORM:

  
City Attorney

# Agenda Voting Results

**Name:** 25.

**Date:** 05/04/06

**Time:** 11:40:27 AM

**Vote Type:** Multiple selection

**Description:** An Ordinance amending Chapter 35 of the City Code regarding sidewalk construction requirements, as requested by Councilmember Radle, District 5. [Presented by Florencio Peña, Director, Development Services; Jelynn LeBlanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4			x	
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8	Not present			
KEVIN A. WOLFF	DISTRICT 9			x	
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

**CITY OF SAN ANTONIO  
DEVELOPMENT SERVICES DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council  
**FROM:** Florencio Peña III, Director, Development Services Department  
**SUBJECT:** Residential sidewalk exception  
**DATE:** May 4, 2006

**SUMMARY & RECOMMENDATION**

An Ordinance amending Chapter 35 (Unified Development Code) of the municipal code to allow for establishment of an exception to the requirement for construction of residential sidewalks.

Staff recommends approval.

**BACKGROUND INFORMATION**

This ordinance would allow new in-fill housing construction (or significant remodeling projects to existing homes) to forego building sidewalks if 70% of the existing developed block does not have sidewalks, and when adjoining properties on either side of the lot also have no sidewalks. City Council first heard this item sponsored by City Council Member Patti Radle, District 5, on April 20, but voted to continue the item until May 4, 2006 to allow staff to consider the option of adding a sidewalk fee to be paid in lieu of sidewalk construction.

**POLICY ANALYSIS**

The City of San Antonio presently requires all applicants for new residential structures or for remodeling projects greater than 25% of the value of a home to construct residential sidewalks. In some areas of the City, there are residential areas developed without sidewalks or curbs. In such cases, the requirement to construct the sidewalk results in a single walk, which will never be connected to other walks to provide a complete pedestrian circulation facility. The imposition of the cost to construct the sidewalk then becomes an unfair financial burden on the individual who will never realize the benefit of a complete circulation system. This amendment will also encourage more infill development to occur.

The exception as proposed would apply only to residentially zoned or residentially developed lots that are 70% developed with no existing sidewalks and where connecting sidewalks do not exist on either side of the property.

A second portion of the amendment is to insert an errata statement into the code that advises applicants that when making ADA improvements to commercial property such as the construction or reconstruction of sidewalks that they may be eligible for a federal income tax credit.

Staff and City Attorney's Office analysis suggests that collecting a fee in-lieu of sidewalk construction and placing the funds in City Council Neighborhood Accessibility and Mobility Program would not be possible due to limitations of State law.

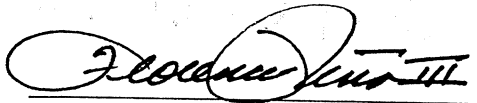
### **FISCAL IMPACT**

There is no impact to the general fund associated with this ordinance.

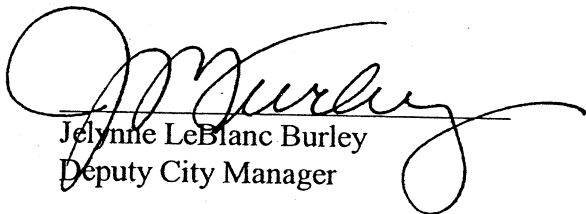
### **COORDINATION**

This ordinance was coordinated with the Disability Access Division of Public Works and the City Attorney's Office. In addition, the item was coordinated with the Governance Council Committee, Urban Affairs Council Committee, and the Planning and Zoning Commissions.

The Zoning Commission recommended approval. Planning Commission recommended approval with some clarifying language and requested quarterly reports on lots meeting this exception.




Florencio Peña III  
Director, Development Services Department



Jelynn LeBlanc Burley  
Deputy City Manager

Approved for Council Consideration:



Sheryl Sculley  
City Manager